

Return Date & Time:
August 7, 2019 at 10:30AM

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE:

JUDY LYNN ANKER,

Debtor(s).
-----X

Chapter 13
Case No.: 16-22732-SHL

**NOTICE OF MOTION OBJECTING
TO CLAIM #24**

**Your claim may be reduced, modified, or eliminated. You should read these papers
carefully and discuss them with your attorney, if you have one.**

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this Court before the Honorable Sean H. Lane, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, NY 10601, on August 7, 2019 at 10:30AM, or as soon thereafter as counsel can be heard, for an Order of this Court disallowing the claim filed by Prime Home Improvements Inc., docketed as Claim Number 24 and for such other and further relief as may seem just and proper.

If you do not want the Court to eliminate or change your claim, then you or your lawyer must file responsive papers with the Bankruptcy Court and serve them upon the Chapter 13 Trustee, Krista M. Preuss, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature and basis of the response. You must also attend the hearing scheduled to be held at the date, time, and place set forth above.

If you or your attorney do not take these steps, the Court may decide you do not oppose the objection to your claim.

Date: White Plains, New York
June 28, 2019

/s/ Krista M. Preuss
Krista M. Preuss (KMP 7299) RA
Standing Chapter 13 Trustee
399 Knollwood Road, Suite 102
White Plains, New York 10603
(914) 328-6333

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UNITED STATES BANKRUPTCY COURT
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IN RE:

Chapter 13
Case No.: 16-22732-SHL

JUDY LYNN ANKER,

APPLICATION

Debtor(s).
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TO THE HONORABLE SEAN H. LANE, U.S. BANKRUPTCY JUDGE:

KRISTA M. PREUSS, ESQ., Standing Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on May 26, 2016, and, thereafter, KRISTA M. PREUSS, ESQ. was duly appointed and qualified as Trustee.
2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 502, 726, Fed.R.Bankr.Pro. 3002(c), 3007, and 9006(b)(3) and S.D.N.Y. LBR 9006-1.
3. Pursuant to Fed.R.Bankr.P.3002(c), a proof of claim in a Chapter 13 case must be filed on or before seventy days after the petition filing date. The 1994 amendments to the Bankruptcy Code added 11 U.S.C. §502(b)(9), specifically providing that late filed claims are to be disallowed absent an explicit exception. See, In re Wright, 300 B.R. 453 (Bankr. N.D. Ill. 2003); see also, In re Daniels, 466 B.R. 214 (S.D.N.Y. 2010) (recognizing that a late claim by a creditor with actual notice of the filing prior to the bar date, did not provide the Court with discretion to permit the late-filed claim). Based upon the wording of this section tardily filed claims are allowed only as described in 11 U.S.C. §726(a) which, under 11 U.S.C. §103(b) applies only in Chapter 7 cases.
4. As pointed out in the case of In re Abody, a late claim is not permissible in Chapter 13 even if there is "excusable neglect". In re Abody, 223 B.R. 36 (B.A.P. 1st Cir. 1998). Further, none of the situations in which a Court may extend the time for filing a claim in a Chapter 7, 12, or 13 case as provided by the Bankruptcy Code, including Fed. R. Bankr.P. 3002(c) and 9006(b)(3), are applicable in this case.
5. Pursuant to the Court's Claims Register, the last day to timely file a proof of claim in the instant case was September 9, 2016 (hereinafter the "Bar Date").

6. On March 8, 2017, Prime Home Improvements Inc. (hereinafter "PHI") filed a claim in the amount of \$12,186.00. This claim was docketed as Claim Number 24 on the Court's Claims Register.

7. Claim Number 24, filed by PHI, was filed after the passage of the Bar Date.

8. For the above-referenced reasons, PHI's proof of claim should be disallowed.

9. If the relief requested is not granted, creditors of the Debtor who timely filed proofs of claim herein will be unduly prejudiced.

10. No prior application seeking the relief requested herein has been filed by the Trustee.

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order disallowing Claim Number 24, filed by PHI and for such other and further relief as may seem just and proper.

Dated: White Plains, New York
June 28, 2019

/s/ Krista M. Preuss

Krista M. Preuss (KMP 7299)
Standing Chapter 13 Trustee
399 Knollwood Road, Suite 102
White Plains, New York 10603
(914) 328-6333

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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JUDY LYNN ANKER,

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Case No.: 16-22732-SHL

**CERTIFICATE OF SERVICE
BY MAIL**

This is to certify that I, Ralphy Amill, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Judy Lynn Anker
27 Hickory Hill Drive
Dobbs Ferry, NY 10522

Julie Cvek Curley, Esq.
700 Post Road, Suite 237
Scarsdale, NY 10583

Prime Home Improvements Inc.
52 Virginia Road
White Plains, NY 10605
ATTN: President

This June 28, 2019

/s/Ralphy Amill
Ralphy Amill, Case Support
Standing Chapter 13 Trustee Krista M. Preuss
399 Knollwood Road, Suite 102
White Plains, New York 10603
(914) 328-6333

CHAPTER 13 CASE No: 16-22732-SHL
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

JUDY LYNN ANKER,

Debtor(s).

**NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE**

**KRISTA M. PREUSS
STANDING CHAPTER 13 TRUSTEE
399 KNOLLWOOD ROAD, SUITE 102
WHITE PLAINS, NEW YORK 10603
(914) 328-6333**
